(41)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO.6577 of 2005

PETITIONER Bahadur Singh, aged about 54 years, son of Shri Jagmohan Singh Rajput, occupation – Service, constable, Department of Police, Raigarh, resident of village Chhote Aatarmuda, Raigarh, Tahsil and District Raigarh (C.G.)

Vs.

RESPONDENT The State of Chhattisgarh, through : Collector, Raigarh (C.G.)

Present : Mr. A.N. Bhakta, learned counsel for the petitioner.

ORAL ORDER

(Passed on 2nd January, 2006)

The petitioner herein filed Civil Suit No. 67-A/2002 in the Court of Second Civil Judge Class II, Raigarh. The said Court decreed the suit ex-parte. Being aggrieved by the said judgment and decree, the respondent herein, namely, State of Chhattisgarh represented by the Collector, Raigarh made an application under Order 9 Rule 13 CPC for setting aside the ex-parte decree. It is stated that the petitioner herein has filed his objection to that application of the State of Chhattisgarh. In addition, the petitioner filed an independent application under Section 151 CPC praying the Court to dismiss the application of the State of Chhattisgarh filed under Order 9 Rule 13 CPC in *limine* as not maintainable for the reason that the application under Order 9 Rule 13 CPC is presented by the Tahsildar, Raigarh, who is not authorized to present such application on behalf of the State Government. The trial Court having heard that application filed by the petitioner under Section

151 CPC and without finding any merit in it by the order impugned in this writ petition dismissed the application of the petitioner.

(2) I have heard learned counsel for the parties. The Court below has pointed out that the application filed under Order 9 Rule 13 CPC was presented on behalf of the District Collector but through his authorized agent, the Tahsildar and that the application also bears the seal and signature of the Tahsildar, Raigarh. In that view of the matter, the Court below has rejected the application of the petitioner filed under Section 151 CPC and listed the case on 19-01-2006 for consideration of the application filed by the State of Chhattisgarh under Order 9 Rule 13 CPC. The view taken by the Court below is un-exceptionable. It is not that the District Collector himself should personally present the application or swear to the facts stated in the application on the basis of the records. It is open for him to authorize the Tahsildar, a Revenue Officer, working under him to swear to the facts stated in the application. It needs to be noticed that the District Collector himself represents the State of Chhattisgarh even in the application filed under Order 9 Rule 13 CPC as pointed out by the trial Court. It is not that the State of Chhattisgarh is represented by the Tahsildar, Raigarh. Looking from any angle, there is no merit in this writ petition filed under Article 227 of the Constitution. The same is, therefore, dismissed, however, with no costs.

Sd/-
Chief Justice
Judge

Brajesh